

Local Area IV Workforce Development Board Procurement Policy

Responsibility for Procurement

All procurement activities must comply with requirements imposed by federal/state statute, regulations or the terms of a federally/state funded grant. In general, compliance with standards established for federal/state funds will ensure acceptable procurement practices. All must follow these standards and guidelines for the procurement of goods and services for all programs.

A Code of Conduct is adopted and maintained to prohibit persons involved in the procurement process from accepting gifts, favors or anything of monetary value from contractors, subrecipients, or potential subrecipients. The code must address moral and ethical issues involved in procurement to including the following:

- Individual conflicts of interest occurring when persons involved in the award and administration of contracts have a financial or personal interest in prospective lower-tier subrecipients or suppliers and
- Penalties, sanctions or disciplinary actions for violators to the extent provided by state and local laws, rules or regulations

A cost or price analysis must be performed for every procurement action and documentation maintained of such in their procurement file.

Basic Procurement Principles

Employees shall comply with the following principles of procurement when initiating actions to procure goods or services in support of funded programs.

Procurement Authority

The authority for procurement actions, as well as the responsibility for design and implementation of procurement systems, is vested with each entity purchasing goods and services, related to the provision of workforce services. Employees shall utilize specific program requirements in the event of a conflict with these requirements.

Equal Treatment

Equal opportunity must be available to all prospective sources of goods and services to be purchased. This means equal access to bid specification information and evaluation must be ensured for all bidders and prospective providers.

Full and Open Competition

All goods and services must be procured in a manner to provide maximum open and full competition. Such competition shall be sought for every purchase, regardless of the article or service to be obtained or the dollar value of the purchase. Where no competition exists or where it is not cost effective to obtain competitive bids, documentation shall be maintained to substantiate why there was a deviation from full and open competition.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for

bids or requests for proposals must be excluded from competing for such procurements. The OMB Uniform Guidance identifies several situations which restrict open and free competition, and the following must be avoided:

- Unreasonable requirements imposed on firms to qualify
- Unnecessary requirements for experience or bonding
- Noncompetitive pricing practices between firms or affiliated companies
- Noncompetitive awards to consultants on retainer contracts
- Organizational conflicts of interest, including related party transactions
- “Brand name” specifications
- Overly restrictive specifications
- Arbitrary actions in the procurement process and
- Exclusion of potential bidders from qualifying during solicitation period for prequalified bidders lists

Arms-Length Negotiations

Negotiations with bidders must be arms-length arrangements. A strict code of conduct shall be observed to prohibit favors or special treatment. Negotiations between departments within the same unit of government shall be structured to achieve an arms-length arrangement.

Protests and Remedies

Potential subrecipients and contractors shall have recourse to remedy a situation when it believes it was treated unfairly in the procurement/award process. Procedures include both an informal and a formal resolution process.

Procurement Records

Employees shall maintain fully documented files and other records sufficient to detail the significant history of procurement. Employees shall retain all records pertinent to all grants and agreements including financial, statistical, property and participant records and supporting documentation. These records must be retained for three years after acceptance of the final audit report, unless any litigation or claim has been started before the expiration of the three-year period. Then records must be retained until the completion of the action and resolution of all issues or until the end of the regular three year period, whichever is later.

Employees shall be responsible for notifying all contractors of the retention requirements. If the relationship with a contractor is terminated, the organization is responsible for the maintenance and retention of the contractor records if the contractor is unable to retain them.

Determination of Need

The process of considering and justifying the determination of the need for a purchase shall be documented and included in the procurement file. The Board may refer to their plan in satisfying this requirement. Where the need was not identified in the plan, the requirements of this section shall be followed. The extent of the needs assessment analysis is dependent upon the nature of the procurement. Simple, small purchases may require as little as concurrence from the person with the procurement authority. More complex and costly procurement requires a full assessment as described below.

Decisions on the extent of assessment require justification and the organization shall ensure justification is consistent with the nature of the procurement.

Part of the process includes gathering information using objective, statistical and subjective data. Census reports, municipal and county demographic data, information from special projects and surveys may be used to determine areas of need based on the extent and complexity of the procurement. A written statement of need is compiled for the procurement record. The needs assessment shall address the following:

- Clear statement describing the population in need of services
- Statement describing the services needed
- Description of the benefit to employers and the workforce population to be served
- Description of the availability and accessibility of local and other resources to meet the identified need, including cost, location and eligibility conditions and
- Assessment of the availability of funding and the cost effectiveness of purchasing the services externally as opposed to transferring clients to other community resources providing the service

An appropriate authorization through the chain of command must be obtained and documented for each procurement. The authorization must include documentation and approval of the following:

- Needs assessment determination
- Procurement method selected
- Funding level
- Procurement time frames and
- Procurement and performance specifications, requirements and criteria

The Vice President/Chief Operating Officer is responsible for procurement and procurement authorizations.

Conflict of Interest Policy

The organization maintains a written Code of Conduct to govern the performance of its Board members, officers, standing committee members, employees or agents engaged in the award and administration of contracts. Each Board member, officer, standing committee member, employee or agent of the organization must sign the code of conduct. Organizational officers, standing committee members, employees and agents involved in the procurement process are prohibited from accepting gifts, favors or anything of monetary value from existing or potential contractors or parties to sub-agreements.

Every reasonable course of action shall be taken in order to maintain the integrity of the expenditure of public funds and to avoid any favoritism or questionable conduct. Any situation suggesting a decision was influenced by prejudice, bias, special interest or personal gain shall be avoided. Before being awarded a contract a person may be required to ensure, in writing, such person has not been retained in violation of the ethical standards. Failure to do so constitutes a breach of ethical standards.

Avoidance of Conflicts of Interest

The Code of Conduct addresses real or apparent circumstances requiring declarations of conflicts, abstention from voting and abstention from participating in procurement decisions. If an individual has a

conflict of interest they must declare a conflict on the official record and abstain from voting on and participating in the procurement.

The following create conflicts of interest and must be avoided by all Board members, officers, standing committee members, employees or agents of the organization in procuring goods or services with federal/state funds:

- Gratuities - Soliciting, demanding, accepting or agreeing to accept or to offer, give or agree to give, from/to another person any economic opportunity, future employment, gift, loan, special discount, trip, favor or service, except nominal gifts as specified in state requirements
- Procurement Documents - Any individual's participation in the development of procurement documents, review of procurement packages prior to release to potential bidders, acceptance by deadline, initial review of procurement packages, negotiation, selection, discussion, award or administration of a procurement supported by funds where, to the individual's knowledge, any of the following has a financial or other substantive interest in any organization which may be considered for award:
 - The individual
 - Any member of his or her immediate family
 - His/her partner or
 - Any organization in which any of the above has a material financial or other substantive interest
- Contingent Fees - To solicit or secure a contract upon agreement or understanding for a commission, percentage, brokerage or contingent fee except for retention of bona fide employees or established commercial selling agencies for the purpose of securing business
- Confidentiality and Nondisclosure – Certain information may not be disclosed until a particular point in the procurement process has been reached. Other information must be kept confidential permanently. The following are examples of procurement information not to be used by any person for actual or anticipated personal gain or for the gain of any other person:
 - Information about the funds available or related data, until the information is made known to all bidders
 - Number and names of bidders until the contract is awarded and the decision is made public
 - Technical or cost/price information to anyone not officially involved in the procurement while the procurement is in progress and
 - Certain technical or proposal information the bidder has designated as proprietary or trade secret, even after the award is made and publicized
- Illegal Acts - Accepting or paying bribes or kickbacks, conspiring to thwart the competitive procurement process
- Other Actions – Other actions which create real or apparent conflicts of interest

Substantive interest means any interest of a substantial nature, whether or not financial in nature, including membership on an organization's governing board, acting as the agent for an organization or employed as an officer of an organization.

Immediate family means any person related within the second degree of affinity (marriage) or within third degree of consanguinity (blood) to the party involved. The prohibited relationships are as follows:

- First degree of affinity: Spouse, spouse's parent, child's spouse
- Second degree of affinity: Spouse's grandparent, spouse's sibling
- First degree of consanguinity: Parent, child
- Second degree of consanguinity: Grandparent, sibling, grandchild
- Third degree of consanguinity: Great grandparent, parent's sibling, brother or sister's child, great grandchild

Procurement File

A historical file to accurately reflect a trail of events and actions leading to the procurement of a product or service must be maintained in a secure, central, accessible location. Procurement files shall include, at a minimum, copies of the following:

- Needs assessment determination
- Procurement method selected
- Procurement authorization(s)
- Public media advertisement
- Request for Proposal (RFP)/Invitation for Bids document
- Proposals received
- Rating criteria
- Completed staff and/or Board evaluation forms
- Independent cost estimates
- Cost/price analysis forms and cost reasonableness determination
- Notes and other documentation concerning negotiations
- Notice of award/non-selection
- Fully executed contract; including amendments/modifications
- Contract performance evaluation
- Signature authorities
- General correspondence related to the specific procurement action; required reports and
- Documentation related to disputes; protests; and claims
- Subrecipient Determination Form
 - Completed risk assessment (only if a subrecipient)

The procurement records/files are subject to audit and must be available for review during monitoring or audits by an authorized agency.

Reasonableness of Cost

As stated previously, the selection and award of contracts should reflect an assurance consideration has been given to competition, effectiveness and efficiency during the evaluation process. A reasonableness of cost analysis is a required step in this process.

It is of utmost importance the procuring organization recognize its responsibility in this area. The task should be specifically assigned, there should be a clear understanding of the steps required and the

process must be thoroughly documented.

Employees shall perform a cost and/or price analysis in connection with every procurement action, including modifications, except for modifications lacking a monetary impact. The method and degree of analysis depend on the facts surrounding the particular procurement and pricing situation but, at a minimum, the organization shall make independent cost estimates before receiving bids or proposals.

Price analysis includes a comparison of prices paid for the same or similar products in the past, as well as the current market rate. Quantities, production and delivery rates should also be taken into consideration. Cost analysis is the element-by-element examination of the detailed costs submitted in the line item budget. Each of the costs contributes to the total price.

A cost analysis must be performed under the following circumstances:

- When the bidder is required to submit the elements of its estimated cost
- When adequate price analysis is lacking and
- For noncompetitive procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation

A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

Independent Cost Estimate

Employees shall, prior to release of the RFP, develop an independent cost estimate. The independent cost estimate provides an objective reference point from which the cost reasonableness is determined. It is derived from a cost breakdown of similar programs in the local market. The estimated costs should be as precise as possible. In some cases, specific costs may not be available either due to the lack of similar types of programs in the market area or due to the inability to predict the type of proposals responding to the RFP. In those cases, the estimate should be based on the best information available. The estimate is the standard from which the established reasonable cost may vary. It is not necessarily the standard to which the proposals must conform. The estimate may be derived from historical data, although allowances and adjustments for time (i.e., information from programs conducted in prior years) must be factored in. This estimate shall be included in the procurement file as an integral part of the cost/price reasonableness analysis.

Establishing Price Analysis

Price analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offer. In negotiated procurements, especially where technical factors are most important, price competition may be inadequate. In such instances, comparing the prices of offers is not usually sufficient to ensure cost reasonableness. A more detailed analysis is needed utilizing past prices, quantities, production, delivery rates and similar non-cost information. Employees will need to conduct discussions with bidders in negotiated procurements to be sure about price. Acceptable ways to seek and document price analysis include the following:

- RFP solicitation of competitive proposals
- Invitation for bid solicitation (formal advertising) with receipt of sealed bids, public opening and award to the lowest responsible and conforming bidder on a fixed price basis
- Small purchase method-documentation of price quotations, RFQ, received is a result of shopping for equipment, supplies or services priced by commercial contractors not in excess of the authorized local small purchase dollar threshold amount
- Catalog pricing (such as for tuition) to the extent these rates are actually relied upon to charge the public for the listed goods or services (frequent discounting would jeopardize reliance on catalog prices as a source for demonstrating reasonableness)
- Recent past pricing for similar goods or services procured locally (assumes past pricing was reasonable)
- Recent past pricing for similar goods or services procured by others in the vicinity (assumes past pricing was reasonable) and
- Yardsticks developed from models designed to identify and price the mix of resources considered necessary for achievement of delivery within the expected range of performance (seeks to predetermine the cost of the object of the procurement)

Establishing Cost Analysis

Proposal costs analysis is used to establish the basis for negotiating contract prices where price competition is not adequate or is lacking altogether and where price analysis by itself does not ensure the reasonableness of prices. Cost analysis is the review and evaluation, element by element, of the cost estimate supporting a bidder's proposal for the purpose of pricing a contract. This review includes analysis and evaluation of the following:

- Supporting data submitted by the bidder
- Cost elements and
- Factors the bidder considered in projecting from data to develop the estimate of cost to perform the specified work.

The following processes require specific additional cost analysis and justification to be supported as price reasonable:

- Agreements in which a written technical and cost proposal applicant has not been submitted
- Agreements funded at or above the proposed cost level
- Agreements only compared to average cost standards (i.e., per participant per training hour) and do not weigh actual differences in relative value (i.e., pre-employment skills versus occupational training)
- Agreements resulting from noncompetitive (sole source) procurement and
- Tuition-based agreements in which the rate charged is not justified by comparison to other available prices in the area

After costs are identified, they are evaluated to determine permissibility of individual items. Factors affecting permissibility are necessity, reasonableness, application of generally accepted accounting principles, practices appropriate to the particular circumstances and any regulatory or contractual

limitations on types or amounts of cost items.

Bidders are usually required to submit basic cost or pricing data for most training related procurements. Even when the contract type contemplated is a fixed unit price performance-based contract, the bidder will submit a detailed line-item budget. This budget shows the detailed cost elements and sub-elements the bidder estimates it will incur in carrying out the work in its technical proposal. Frequently, the bidder is requested to submit backup data to support its cost estimates, either with the cost and price proposal or at a later point in the procurement process.

Contract cost analysis is the element-by-element examination of the costs and related information presented in the cost and pricing data bidders submit. It involves analyzing cost data furnished, estimating assumptions stated and the rationale employed by bidders in reaching the amounts proposed. All these are cost factors contributing to the total price estimated by bidders.

The first step of a cost analysis is verifying the cost and pricing data submitted and evaluate the cost elements in the data to include the following:

- Judging the necessity for and reasonableness of proposed costs
- Evaluating the bidder's cost trends on the basis of current and historical costs or pricing data
- Conducting a technical appraisal of the estimated labor, material and other requirements proposed and
- Applying negotiated, audited or proposed indirect cost rates to determine the contract price, where such rates are proposed

The second step of a cost analysis is comparing the costs proposed by bidders with other data. This data includes actual costs incurred by the same bidder in the past. Cost analysis can also compare the current proposed costs with previous cost estimates from the same bidder or from other bidders for the same or similar items. It is appropriate and helpful to compare a bidder's costs with those proposed by other bidders in the same procurement. Comparison to the independent cost estimate can be helpful as well.

The third step of a cost analysis is evaluating the bidder's cost submissions against applicable contract cost principles. These cost principles define and describe the meanings and limits of a variety of costs. Costs not conforming to these meanings and limits are not allowable. State or local laws and regulations may make certain costs unallowable or place limits on costs in addition to those cited in program specific provisions and regulations.

Profit shall be negotiated as a separate element of the price. Procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities). Under no circumstances shall fees or profits exceed 10 percent of the contract amount. To establish a fair and reasonable profit, consideration shall be given to the following:

- Complexity of the work to be performed
- Risk borne by the awardee
- Bidder's investment
- Amount of subcontract
- Quality of the bidder's past performance

- Industry profit rates in the surrounding geographical area for the same or similar work and
- Market conditions in the surrounding geographical area

Guide to Conducting Cost Reasonableness Review

The following is a guide to conduct a cost reasonableness review. The review should include, but not be limited to the following:

- Consider prior experience and effectiveness
- Conduct a line item budget analysis
- Determine the amount of profit applicable. Profit should be allocated by category according to benefits received. Profit may be identified as a fee. Excess profit (for private-for-profit entities) is not allowable. Neither is the generation of excess program income (for nonprofit and governmental entities).
- Determine the amount of the total budget
- Determine the amount of the administrative budget
- Determine the administrative percentage of the total budget
- Identify all cost items and salaries
- Ensure costs are properly allocated and classified
- Review all cost items with respect to relevancy and appropriateness in accomplishing the services provided
- List any high or questionable costs
- Ensure an organization-wide cost allocation plan is provided where the bidder has multiple sources of funding, if applicable
- List any questionable issues of purchase or lease
- Ensure the cost of audit is covered
- Review staffing resources and salaries
- Ensure the budget matches the salary distributions sheet
- Ensure staff salaries are properly allocated to administration or other applicable categories, such as training
- Determine if the staff appears adequate for the proposed activities
- List high or questionable staff salaries and benefits
- List low cost or unreasonable staffing
- Review travel reimbursement policies
- Review cost per positive termination in relation to similar training, length of time and quality
- Review cost per entered employment in relation to similar training, length of time and quality
- Review cost per contract hour (total participants x hours of participation for completion = contract hours)
- Perform a comparative analysis when more than one organization responds to the solicitation for same or similar services. The analysis should include a comparison of activities and services to be offered, staffing patterns and costs proposed. Use this type of comparison to assess the reasonableness of price through competition.
- Perform a comparative analysis when an item or service is currently available in the local service

delivery area. This should include comparisons with current market rates to establish the reasonableness of the proposed cost and

- Compare relevant data to information gathered in the independent cost estimate. Consideration should be given to such factors as time (i.e., currently programs as compared to previous programs), similarity of programs and other relevant cost elements. Other relevant factors to be considered may be target populations (i.e., hard-to-serve individuals, dislocated workers, unemployment insurance claimants, etc.) and performance measures. These and any other relevant comparisons must be justified in terms of similarities and differences of the programs under consideration.

Documentation

Records must be maintained certifying an appropriate review has determined the price is reasonable. All awards must be supported with documentation establishing relevant and appropriately detailed cost and/or price data has been submitted and reviewed by assigned staff. At a minimum, each proposal should contain the following:

- Copy of the line item budget
- Lease agreements and calculations of space and costs allocated for program purposes
- Cost allocation plans where costs to be funded are prorated between different funding sources
- Approved wage and benefit schedules for positions to be funded in the proposal submitted
- Policies on travel reimbursement
- Calculations, bids and/or documentation used to determine costs of equipment, supplies and where appropriate, start-up costs
- Cost determinations of each classroom training course based on per hour, day and week cost considerations if applicable to services offered and
- Documentation on costs of other funding sources received by the organization impacting directly or indirectly on the program services proposed

Records must be maintained certifying the name(s) of individual(s) who performed and/or approved the cost reasonableness review. Records should also be maintained to show differences in the quality of the service or output. After completion of the review, a report outlining strengths and weaknesses of the proposed budget should be compiled and used in negotiations. All changes resulting from negotiation should be documented.

Costs or prices based on estimated costs are allowed only to the extent costs incurred or cost estimates included in negotiated prices are consistent with items of the contract and applicable federal cost principles.

Competitive Procurements: Small Purchase, Sealed Bid and Competitive Negotiation Methods

Senior Management Staff will have the authority to purchase supplies/equipment using authorized vendors. All procurement policies established by the Feder Government, State Government, CEOB, and the Board of Directors must be followed by staff making purchases. Limits to purchases are as follows:

| | Staff | Senior Staff | President/CEO | Board Members |
|--------------------------------------|--|---|---|---------------|
| General Items/Services | \$500- Single Transaction \$1,000 Monthly | \$2,500- Single Transaction \$5,000 Monthly (President/CEO can approve exceptions) | \$5,000- Single Transaction \$7,500 Monthly Limit (Board Chair can approve exceptions) | N/A |
| Travel Expenses | Pre-Approved Costs No Per Diem | Pre-Approved Costs No Per Diem | Up to \$5,000, (Board Chair can approve exceptions) | Up to \$2,000 |
| Participant Direct Services/Supports | N/A | Pre-Approved Costs | Pre-Approved Costs | N/A |

Two fiscal staff members together have the authority to obligate client training and supportive service funds up to the current limits established in the training policies and the available budget. Final expenditures will be subject to purchasing authority.

Micro Purchase (aggregate dollar amount < \$15,000)

The micro purchase method shall be used for aggregate purchases not greater than \$15,000. Purchases can be made without obtaining competitive quotes if management determines the price for purchase is reasonable. Purchases under this method should be distributed among qualified suppliers.

Small Purchase Method (up to Simplified Acquisition Threshold)

The small purchase method shall be used for relatively simple, informal purchases with an aggregate cost of at least \$15,000 but not more than \$350,000. Employees shall make every reasonable effort to obtain price or rate quotations from a minimum of three responsive providers to ensure reasonable competition. Such quotations shall be documented and made part of the procurement files for review purposes. Documentation of all awards must substantiate the best price/value.

Aggregate purchases exceeding \$350,000 shall not be divided to fall within the small purchase limit and avoid competitive bidding requirements. Split purchases used to circumvent competitive bidding shall be considered flawed and may be disallowed.

Formal Advertisement Methods (aggregate cost > \$150,000)

Purchases with aggregate cost exceeding \$350,000 must be procured using one of two formal advertisement methods. The nature of the goods/services needed generally specifies the method used. The sealed bid method is generally used to obtain goods and services where precise requirements can be easily specified. The competitive proposal method is generally used to obtain services that cannot be specifically defined. Both methods solicit written responses via public invitation (advertising).

Sealed Bid Method

The sealed bid procurement method shall be used if, at a minimum, the following conditions are present:

- Complete, adequate and realistic specification or purchase description is available
- Two or more responsible suppliers are willing and able to compete effectively for the award and

- Procurement lends itself to a firm fixed-price contract and lower-tier subrecipient or contractor selection based primarily on price is appropriate

In formally advertised procurements the following shall be accomplished:

- Issue invitations for bids to known suppliers and publicly advertise the invitation allowing sufficient time, considering the complexity of the item to be procured prior to the date of bid opening, to permit adequate responses
- Clearly define the items or services needed to enable bidders to respond properly
- Open all bids publicly at the time and place stated in the invitation for bids and
- Award a firm fixed-price contract (lump sum or unit price) by written notice to the responsible suppliers whose bid, conforming to the invitation for bids, is lowest in price

Factors such as discounts, transportation costs and life cycle costs shall be considered if the invitation for bids provides for their consideration. Payment discounts may be used to determine the low bid only if prior experience indicates such discounts are generally taken.

The invitation for bid should state the organization may reject any or all bids when there are sound, documented business reasons.

Competitive Negotiation Method

The competitive negotiation method shall be used if the following conditions are present:

- Nature of the item or service needed precludes developing a specification or a purchase description precise enough so all interested parties have an identical understanding of the requirement
- In addition to price, other factors will be considered in making an award and
- Two or more responsible suppliers are willing and able to compete effectively for the award

When using the competitive negotiation method, the following must be accomplished:

- Solicit offers by distributing RFPs to an adequate number of qualified sources to ensure competition. This should include contacting sources included on the organization's mailing or bidders lists, publicizing the RFP and honoring requests for copies of the RFP to the maximum extent practicable
- Ensure the RFP identifies all significant evaluation factors, including cost or price, and the relative importance of each
- Identify the type of contract (cost reimbursement, fixed price, or fixed unit price performance based) to be awarded
- Provide mechanisms for the following:
 - Making technical evaluations of proposals received and determining responsible suppliers for the purpose of holding written or oral discussions
 - Selecting the lower-tier subrecipient or contractor whose proposals, when evaluated, are believed to have a reasonable chance of being selected for awards
 - Conducting negotiations with bidders deemed to be in the competitive range
 - Awarding the contract to the responsible bidder(s) whose proposal will be most advantageous, price and other factors considered; and

- Notifying unsuccessful bidders of the award.

Request for Proposal Process

The RFP process provides the opportunity for negotiation of both technical and cost/price elements with responsive and responsible bidders whose proposals are judged to be within the competitive range. In addition to price, values such as experience and apparent understanding of the quality/effectiveness of the goods or services must be considered. To assess these values equitably, a point system should be used to rate the proposals received.

All requests for offers for the provisions of goods and services must be in writing. At a minimum, an RFP process shall include the following elements:

- Bidders shall submit a line item budget
- RFP process shall require proposals are separately rated by staff and/or other qualified objective third parties using a rating method to set criteria for valuing and judging price reasonableness and consideration of past performance in a quantifiable and criteria referenced manner. Rating sheets describing the minimum qualification thresholds, dated and signed by designated reviewers, must be maintained
- RFP process shall provide for individual scores to be aggregated
- Final awards shall be consistent in dollar value and category with the stated intentions and numerical ratings in the RFP. Any inconsistencies shall be documented.
- Awards for training shall be in-demand occupations approved by the Board
- Awarded contracts shall be consistent in cost, scope and deliverables approved by the Board and any inconsistencies shall be documented and
- An RFP shall not indicate acceptable prices

This method of solicitation requires step-by-step written procedures to address the ways the proposals will be developed. The process begins with some basic decisions described in the following section.

Basic Decisions Regarding the RFP

Because the RFP is an extension of the local planning process, there are many variables to its development. Employees shall be aware each method has its own vulnerability and requires countervailing steps and measures. Basic considerations are as follows:

Yearly or Multi-Year Contract

The yearly method means the contract shall be for a period of one year only. In using the multi-year choice, the organization shall establish additional year continuation requirements such as whether or not an updated proposal will be required. The renewal process must be fully documented from start to finish.

Single or Multiple Cycle RFPs

Employees shall decide on the most effective system for issuing the RFP, whether one RFP cycle should be utilized for all procurement transactions or whether it would be more appropriate to establish varying cycles for different transactions. An important consideration is the length and timing of the cycles within the previously established frameworks.

Program Dollar Allocations, Single Figure or No Dollar Figure

In publishing the RFP, employees must decide whether to include the overall program allocation, the amount of the allocation set-aside for the RFP process, or omit any inclusion of available funding. It is generally preferable to not make public the amount of the set-aside allocation, as bidders may attempt to back into the amount available.

Open or Rolling RFP

Similar to the single/multiple cycle decision, employees should decide on the acceptability of open or rolling RFPs. Repeatedly funding an organization through noncompetitive, roll over awards creates a risk of unreasonable pricing and inadequate quality, especially in situations where the activity being sought is a tailored rather than an off-the-shelf procurement. The market should be tested periodically to signal a readiness for acceptance of change and to demonstrate no one has a lock on the procurement action.

RFP Development

An acceptable RFP must reflect decisions concerning funding sources, labor market conditions, program mix and federal, state and local requirements. An internal review shall be conducted to ensure all required elements have been included in the document and are described in detail, leaving nothing to assumption. If an area is to be reviewed separately (during negotiation or after selection) the RFP should make this clear.

While it is not required to publish the point scale assigned to each criterion as a part of the RFP package, the scale must be developed and established prior to the solicitation. Any requirement noted in the RFP instructions must be included in the evaluation criteria. It shall be decided, and stated in the RFP, whether proposing entities will be afforded an opportunity to submit information or documentation initially omitted. It is of the utmost importance to the integrity of the RFP process proposing entities be afforded fair and equitable treatment.

The RFP package shall include general information such as the purpose, due date, information about the bidder conference, available funds, proposed grant period and type of contract to be awarded, applicable policies and procedures, assurances and certifications and the contract boilerplate (if applicable). The package shall also contain solicitation instructions including a requirement for information, as applicable, concerning the bidder's background and experience, accounting system and audit/monitoring results, as well as instructions for developing the program proposal, budget detail and performance schedule.

Modifications to the RFP

During the procurement process, if changes occur regarding service delivery requirements, funding, or the scope of work to be procured, the RFP may be amended. All bidders of record shall be notified of the modification(s) in writing. If modifications are substantial and may affect a bidder's right to equal and non-biased treatment, the RFP shall be withdrawn and another shall be prepared.

RFP Elements

A strong RFP process reflects the goals and objectives of the organization. The RFP shall be

comprehensive and detailed to secure responsive proposals. If an element is not included in the RFP, it cannot be considered during the rating process. At a minimum, the RFP shall include the following:

- Proposal Outline - This element identifies the exact format and sequence for submitting responses. This can be accomplished by including a table of contents in the RFP to define the expected contents and format.
- Statement of Work - The RFP must include a statement of work. One of the most crucial parts of the RFP package is the statement of work. This provides a clear, concise description of the services to be provided and influences the bidder's actions and indicates expectations as well as whether this is a subrecipient or contractor procurement. A sufficient statement of work summarizes the key features of the proposal in terms of mandatory, optional and supplemental components and program results. A statement of work is comprehensive and includes definitions and specifications (such as units of service, standards, performance goals, objectives, activities) of the workforce development services to be purchased.

The proposed program or activity must be sufficiently detailed and adequate to protect federal/state funds. This item is developed, in negotiation with bidders, to establish acceptable levels of performance during the time period for the training.

- Time/date - This element includes statements regarding the period of time during which services are to be performed and due dates established for responses to be considered. Where proposed contracts are to be multi-year, the RFP should include requirements for continuing the additional years.
- Protest Rights - This element establishes the recourse for bidders who believe their rights were violated in the solicitation or selection process and for those whose proposals were rejected. The RFP shall identify the process to be followed when protesting or inquiring. It shall include the name and address of the person to whom inquiries may be submitted and the time frame for submittals. Methods to be undertaken upon receipt of the inquiry, should be addressed, including who will respond and the time frame for response.
- Right to Not Make Award - This element includes statements regarding the soliciting organization's right to accept or reject any and all proposals received. It also addresses the organization's right to cancel all or portions of the RFP or reject any contract, and whether any of the bidder's costs in preparing or submitting a response to the RFP will be paid.
- Negotiation Requirement - This element establishes the soliciting organization's negotiation rights to contact the bidder to clarify, explain, or verify any aspect of a submitted proposal in response to an RFP. It also establishes the right to require the revision of any price, technical aspect, or other portion of the proposal resulting from negotiations conducted.
- Signature Authorization Certificate - This element includes signed statements from the responding organization to ensure the individual signing on behalf of the organization has the authority to submit the proposal and carry out services solicited in the RFP.
- Defined Cost Data Requirement - This element identifies fiscal compliance requirements of cost categories, allowable costs and references to cost limitations (where applicable) by specific program legislation or regulation. This element also specifies the use of specific forms (if

- applicable) such as use of a standard budget form to be used in responding to the RFP.
- Line Item Budget by Cost Category - This element includes an outline of the budget summary to be completed by the bidder. It must require sufficient detail of costs to enable an analysis of cost/price reasonableness. Planned expenditures within each cost category should be detailed by line item.
 - Responsiveness Thresholds - This element identifies minimum standards for considering a response, as well as any component to cause a proposal to be disqualified. These components may include administrative and organizational qualifications, fiscal system standards, performance and outcome expectations, expected completeness, compliance with RFP requirements, adherence to time frames, pre- award survey results and other provisions.
 - Assessment Ranking Criteria - The entire review and selection process for assessing and considering responses should be identified in the RFP. The description should note when selected staff and committee members will review the proposals. It shall also describe how the proposals will be reviewed. The discussion shall include the ranking or rating criteria to be used and how points will be assigned, as well as any considerations relating to competition, reasonableness of cost/price, organizational issues and scope of work activity.
 - Performance Standards - This element defines the established goals and outcomes expected in the solicitation. Any written procedures regarding performance standards to be met through services solicited should be included.
 - Participant Selection - This element identifies the approach to be used and the process to be followed to select participants, negotiated service levels for target groups, clear delineation of responsibility for participant recruitment and a provision for the contingency of low enrollments.
 - Policy Priorities - This element identifies policies or statements of intent regarding program specific priorities established by the soliciting organization as a result of its review of local workforce development needs.
 - Required Certifications - A certification of compliance with the Clean Air Act, Federal Water Pollution Act, Drug-Free Workplace Act and prohibitions on lobbying, suspension and debarment may be required by federal regulations. All RFPs expected to result in a lower tier subrecipient award or contract exceeding \$100,000 must include a completed debarment certification or statement of compliance. Federal agency organizations must certify they will provide a drug-free workplace as a pre-condition of receiving a federally funded contract exceeding \$100,000. Lobbying certifications are required for all lower tier subrecipient contracts exceeding \$100,000.
 - Conflict of Interest - This element defines the soliciting organization's code of conduct and conflict of interest policies. Such policies shall include confidentiality of the proposal process, arms-length negotiation expectations with the bidders, objectivity and fairness bidders may expect in the RFP process, provisions concerning the protection of government funds and expected standards of performance.
 - Corporation Certification - When applicable, this element requires submission of the State of Kansas Corporation Certification to include articles of incorporation, organization charts, bylaws

and governing board members. The element also requires submission of the certification of nonprofit status, if applicable.

- Standard Contract Terms and Conditions - All RFPs shall include a copy of the general obligations to be made a part of the final contract.
- Definition of Terms - All key terms contained in the RFP shall be expressly defined in the RFP.
- Regulations - Potential respondents of the RFP are expected to be familiar with applicable regulations and appropriate directives governing the program. All lower tier subrecipients and contractors selected for a subaward or contract are expected to understand and comply with all applicable requirements in conducting services under the agreement awarded. Copies of all legislation and regulations must be made available upon request.
- Program Income Requirements - This element describes the soliciting organization's requirements concerning profit earned/program income for lower tier subrecipient solicitations. Refer to applicable regulations for guidelines to establish reasonable profit level and program income disposition requirements.
- Pell Grants and Other Funding Sources – When applicable, this element identifies funds that may directly or indirectly impact the services solicited under the RFP. Provisions shall require duplicate resources be used to supplement the expenditure of federal/state funds.
- Key Staff Qualifications – When applicable, this element requires information concerning the staff qualifications and licensing and/or certification necessary to provide services. This could include a request for resumes and job descriptions for personnel to be hired for the services to be provided.
- Training Definition, if applicable - This element requires the following information regarding any training to be provided:
 - Days/hours
 - Sequence
 - Duration
 - Course curriculum
 - Skills to be achieved
 - Measurement of achievement
 - Pre/post testing
 - Entrance minimums/maximums
 - Attendance

Development/Use of Bidders Lists

Development of the bidders list is accomplished through a survey of the open market. Efforts to fortify the list must be made through advertising and other means designed to recruit the greatest number of potential bidders. Bidders lists are intended to provide a directory of responsible bidders/bidders the organization may utilize in its solicitation of goods and services.

A potential bidder may have his/her name placed on a potential bidders list maintained and kept current by the entity or agency conducting procurement activity. Release of information about the procurement must not compromise the equal competitive status and treatment of all potential lower tier subrecipients

and contractors. Historically, underutilized businesses must have an equal opportunity to compete for and be selected for award of contracts or subcontracts.

Published Notice

A competitive procurement is formally advertised by publishing a notice of intent to contract. Consider the type of service to be purchased, the geographic area to be served, the number of individuals to be served and the availability of resources (i.e., staff, time, funding, etc.) to determine the appropriate degree of advertisement.

The following information should be included in the published notice:

- Brief description of the issuing agency and service to be provided
- Description of geographic area to be served
- How to obtain a RFP package
- Deadline for obtaining RFP package and submitting an offer
- Date of bidder conference, if applicable and
- Name and phone number of contact person
- If Federal funds will be utilized for procurement an organization receiving approval must be an Equal Opportunity Employer

Bidders Conference

The entity conducting the procurement may hold a conference for potential bidders to acquaint them with procurement policies and procedures, the service(s) being procured and the requirements of the RFP. The decision to hold a bidders conference is based on the extent of competition, the complexity of the RFP material and resources available (i.e., staff, time, funding, etc.). If a bidder's conference is held, the information concerning the date, time and place of the conference must be stated in the procurement package and in the advertisement of the procurement. Ideally, the conference is held shortly after the procurement package is released and after potential bidders have had time to review the RFP. The conference can be conducted in one or more of the following ways:

- Deliver a presentation on the procurement package, then accept written questions from those in attendance
- Accept written questions only and respond to bidders only in writing
- Accept written and oral questions and respond orally and in writing with copies of the questions and answers provided to all potential bidders of record. Only written answers to questions are considered official and binding.
- Following the bidders conference, all written questions and answers should be documented and maintained in the procurement file. In any event, all bidders must be treated equally and be given access to the same information. The bidders conference may be recorded by video or audio for future reference and clarification and
- Capacity-building conferences may be held by entities procuring services. At these conferences, staff may complete an example or model package to give potential bidders an understanding of the procurement process. Capacity building conferences must be held prior to a procurement activity.

Receipt of Late Offers

Offers received after the RFP's specified date and time shall not be considered.

Unsolicited Proposals

If an employee receives an unsolicited proposal and considers the proposal for funding, the employee must document a determination of need and initiate a full procurement process. If an RFP or other solicitation is developed, the employee must take special care to ensure the language contained in the specifications is unbiased, clear and unambiguous. Every effort shall be taken to ensure the principle of full and open competition is maintained.

Proposal Processing

The method by which an RFP is processed is equally as important as the contents of its package. The availability of the RFP should be announced through a legal notice in general circulation newspapers and bidders list notices (if applicable) updated at least annually. A bidder's conference is beneficial in providing information regarding the RFP. A list of attendees and minutes of the meeting shall be kept in the official file. An official proposal receipt list shall be maintained. Proposals received should be date and time stamped. Receipt signatures shall be required for hand delivered proposals.

All proposals accepted shall be reviewed. Initially, proposals must be reviewed for completeness. If a proposal is incomplete, the procuring organization may either contact the bidder to obtain additional information or declare the proposal unresponsive, thereby eliminating it from further consideration. In all cases, the procurement procedures shall identify which practice will be used when incomplete information is received and such information should be shared with potential bidders. Responsive offers are those offers conforming to all the requirements of the solicitation request. The procuring organization must ensure potential lower tier subrecipients are none of the following:

- Organizations/Corporations not in good standing with the State of Kansas (delinquency in paying taxes, etc.) <https://www.kansas.gov/bess/flow/main?execution=e1s1>
- Organizations/Corporations listed on the federal debarment list https://www.sam.gov/portal/SAM/?portal:componentId=9c7c412d-0e75-4bfd-8223-f425559b9408&interactionstate=JBPNs_r00ABXc0ABBFanNmQnJpZGdlVmlld0lkAAAAAQATL2pzZi9uYXZpZ2F0aW9uLmpzcAAHX19FT0ZfXw**&portal:type=action#1

The review and rating of responses to solicitations through a consistently applied evaluation method is of primary importance in the procurement process. The key to an acceptable method is the assurance of equal treatment and arms-length consideration. In developing a method for reviewing and rating responses to solicitations the following considerations should be addressed:

- Each acquisition shall include evaluation factors specific to the particular acquisition
- A cost analysis shall be performed by the contracting entity to arrive at the best offer. A cost reasonableness determination shall be part of the evaluation process and such determination shall be made a part of the procurement file and
- While price is an important factor in selecting proposals for an award, other factors in the competitive proposal process shall be considered. Those factors may include the following:
 - Quality of services offered

- Operating characteristics
- Technical innovations
- Administrative capability
- Compatibility with ongoing programs of the bidder's organization
- Previous experience in providing the same or similar programs
- Audit/monitoring reports; and ○ Goal attainment and program outcomes

Review criteria shall include, at a minimum, the following:

- Administrative and organizational capability - The demonstrated ability of the responding organization to successfully administer and operate a program of services of the kind and scope proposed including the following:
 - Experience providing services
 - Quality and staffing pattern of project personnel and
 - Organization's capability for project administration and fiscal management
- Scope of work activity - The demonstrated methods proposed to achieve the desired results through the adequacy of detailed work plans, activities and outcomes identified in the proposal
- Program Budget - The demonstrated cost reasonableness of budgeted items with respect to permissibility, necessity and relationship to the provision of services identified in the proposal and its anticipated outcomes

Generally, the procuring organization selects the lower tier subrecipient or contractor receiving the most favorable evaluation, cost and other factors considered. Where only one agreement is to be awarded and more than one bidder is being considered for an award, changes in proposals resulting from any negotiation performed with each bidder shall be re-evaluated in accordance with the same evaluation method used in the original review. Proposals received shall be rated in relation to other proposals received in the same solicitation.

Proposals selected for an award, as a result of the review and evaluation method should be contingent upon satisfactory results received from negotiations conducted and a pre-award survey of the organization. The procuring organization should reserve the right to not award a contract should the proposals received fail to meet established minimum standards. In all RFP procurements, documentation to justify the selected bid is required.

All bidders shall be notified in writing of the results of the selection process. Upon request, procuring organizations may conduct a meeting with unsuccessful bidders. A copy of the successful proposal may be made available upon request.

In the review and decision process, it is important to follow established RFP steps to the letter. Each decision step must be segregated, each step and outcome at all levels must be documented, the roles of each decision making group (i.e., review committee, program staff, Board staff, etc.) must be distinguished, and all records must be maintained in the official files.

Selection and Award Process

Because of its importance to the procurement process, the system for selection and award must be well

planned in advance of the receipt of proposals. The written plan should include the following:

- Dates the process will begin and end
- Roles assigned to staff and committee members
- Reasonableness of cost/price (analysis required)
- Scoring approaches
- Procedures to be used in technical evaluation of responses and
- Assurances of maximum use of full and open competition, including criteria to justify approval of any sole source procurements

Technical evaluations shall include the following:

- Quality of services offered
- Operating characteristics
- Technical innovations
- Administrative capability
- Compatibility with other ongoing programs
- Previous experience in providing the same or similar programs and
- Review of monitoring reports, goal attainment and program outcomes (if the bidder is a previous subrecipient, lower tier subrecipient or contractor)

Evaluation Process - The need to rigorously correlate the evaluation process to the technical criteria is especially important. The RFP shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The RFP must set forth all requirements bidders must fulfill and all other factors employees will use in evaluating bids or proposals. The evaluation process must be based upon the technical criteria included in the RFP.

Evaluation Factors - Factors must be established and used to standardize and evaluate the proposals received. In addition to the standard audit requirement and necessary debarment language, the following factors must be utilized to evaluate responses to solicitations:

- How the Statement of Work was addressed in relation to what was requested in the RFP
- Pre-award survey results satisfying the related questions of soundness of fiscal and administrative ability. Existing lower tier subrecipients or contractors shall have a valid pre-award survey/monitoring report not more than two years old
- Sufficient knowledge of federal/state/local policies to perform objectives of the RFP
- Cost-reasonableness consideration for all aspects including cost per objective or payment sequence, administrative costs (including salaries) and building/rent costs
- How objectives are addressed
- Programmatic structure and format
- Conformance to the soliciting organization's requirements
- Budget reviews including payment schedule
- Experience of those proposed to perform the training documented and
- In case of ties on the rating, consideration may be given to those bidders who propose additional services to participants beyond the scope of work/core training/budget. Historically

Underutilized Businesses may also be given consideration in case of ties in the evaluation process.

Rating/Scoring Sheets - Once evaluation factors have been established, they are used to evaluate/score the proposals received. Employees may achieve the benefits of group rating by holding a discussion of the evaluation factors in advance of the actual rating. However, proposals shall not be rated as part of a group. Each proposal must be rated individually. Rating/scoring sheets are used to determine which bidder will be offered a contract agreement. In the event a dispute or disagreement arises concerning the projects funded, the rating/scoring process will be subject to close scrutiny. A clear and objective format is essential to this particular phase of the procurement process.

A sound rating/scoring is possible only if a technical or specific RFP is utilized. Different parts of the proposal have varying importance factors and shall be reflected in the scoring of the proposal components. Usually each component has a number of points possible to become part of the overall score.

Evaluation Criteria - Weighting an evaluation factor can be accomplished by using numbers or qualitative description. The evaluation factors may be prioritized in ascending or descending order of importance, such as the following:

- Permissibility of proposed activities or services
- Conformance with regulations and policies
- Capability (experience) of bidder to deliver services (both programmatic and administrative) and
- Cost (amount and reasonableness)

Weights may be assigned as a percentage or as a point value. Percentages should add up to 100 percent. Individual point values should add up to the total number of points in the scoring system.

After evaluation, each rating/scoring sheet shall be completed and signed by the reviewer. All scores shall be collected and totaled. To help ensure objectivity, each member of the responsible committee should review every proposal. The proposals must be rated against standard criteria established by the organization and its governing board. This criterion shall be included in the RFP.

Rating results shall be issued in writing and reported to the Board. Under no circumstance will members of the review committee be directed, or pressured, to change their rating results by any other committee member, Board member, or staff member. Violations of this policy may result in disallowance of all subsequent contract expenditures.

Relevancy and ensuring the best product is received at the best value should always be the primary objectives of procurement. Applying common sense, knowledge of the process and familiarity with the specific situation will help ensure these objectives are accomplished.

Noncompetitive Procurements - “i.e. Sole Sourcing”

Noncompetitive negotiation is procurement through solicitation of a proposal from only one source or after solicitation of a number of sources; competition is determined inadequate or nonexistent. The circumstances under which procurements may be awarded by noncompetitive negotiation are limited to one or more of the following conditions:

- If an emergency exists and the urgency of the requirement will not permit a delay created by

obtaining competition

- On-the-Job Training (OJT) contracts, except OJT brokering contracts, which shall be selected competitively
- The item is available from only a single source
- Competition is deemed inadequate by an attempt to obtain competing bids
- Enrollment of individual participants in classroom training and
- The awarding agency authorizes noncompetitive proposals

The following types of purchases are also exempt from competitive procurement:

- Magazines
- Books
- Periodicals
- Newspapers
- Direct advertising space and time, unless there are multiple businesses in the area able to provide the same services to the same coverage area needed and same demographics
- Conferences – the cost of attending or participating is exempted. The cost of putting together a conference is not exempted.
- Training Sessions and Seminars – related to the individual’s profession or program and that are available to the public
- Copyrighted materials such as films, film strips, books, pamphlets, videotapes, or audiotapes (computer software is not included in this category). Copyrighted materials are defined as those which are available for purchase from only the publisher owning an exclusive copyright or from a single distributor operating under an exclusive franchise from the publisher.
- Updates of Computer Software, which the agency already owns
- Repair services and operational supplies by original manufacturer, if such repairs/parts/services/supplies must be performed or obtained by the original manufacturer or by the manufacturer’s authorized service center, because (1) the nature of the repair, service or supplies are available only from the original manufacturer as a result of a lawful patent, or (2) the technical nature of the repair or service can only be performed by the original manufacturer due to a patented design or technical manufacturing process or (3) repairs of such equipment would violate the terms of, or part of, the equipment warranty or purchase agreement
- Organizations eligible to acquire equipment from either State or Federal surplus property may do so without any additional procurement practices
- Organizations eligible to utilize a state contract/agreement awarded by the State of Kansas may do so without any additional procurement practices
- Awards for on-the-job training may be made (except OJT brokering awards which shall be selected competitively) of program participants without obtaining competition if the contracts, subgrants, or subagreements provide that an employer-employee relationship will exist between the employer/contractor and the program participant; and that the employer/contractor will provide job training to enable the participant to perform effectively as a regular employee of the employer/contractor’s establishment. When such awards are made, the organization shall

maintain a record of the awards and, if requested, shall furnish the state with the record that includes the employer/contractor's name, award amount and services to be performed.

- Payment for professional certification licenses which are needed by the client to complete their job training
- Micro purchases including participant program outlay purchases for \$3,000 or less (i.e. tools, books, supplies, uniforms)

Poor planning shall not qualify as an emergency. Procurement may be handled as an emergency if the following occurs:

- A public calamity requires the prompt purchase of items to provide for public needs or preserve property
- The item is necessary to preserve or protect the public health or safety of residents or
- The item is made necessary by unforeseen damage to public property

A noncompetitive negotiation procurement resulting from inadequate competition must be preceded by a demonstrated good faith effort on the part of the organization to solicit qualified providers through the small purchase, sealed bids, or competitive proposal processes.

Noncompetitive/sole source procurements require cost negotiation and a thorough cost/price analysis. The files must document evidence the values achieved through competition have been maintained.

Noncompetitive Procurement Application - The organization must complete and submit the noncompetitive procurement application form to Commerce prior to executing a contract for any sole source procurement exceeding \$25,000. Application submission for noncompetitive procurements in response to public emergencies is required within 30 days of contract execution. All organizations shall document the circumstances of the noncompetitive procurement in the procurement file. The Noncompetitive Procurement Application should be submitted to the following address:

Kansas Department of Commerce Fiscal Unit
1000 S.W. Jackson, Suite 100 Topeka, Kansas 66612-1354

- or

fiscal@kansascommerce.com

Protest/Dispute/Grievance Procedures

To ensure equity both in the pre-award and post-award phases of the procurement, written procedures are required for protests and disputes. Once a selection is made bidders must be notified in writing of the results. Failed bidders must be advised in writing they may have the right to appeal the decision. Employees must include this information to prospective bidders. Potential bidders shall be provided with the name and address of the person to contact for any protests, appeals, disputes and inquiries.

The organization will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but not limited to, protests, disputes and claims. These standards do not relieve the organization of any contractual responsibilities under its contracts.

Protests occur when unsuccessful bidders or bidders believe they were treated unfairly in the contract

award process. Protesters generally believe they, rather than the organization selected for the award, deserve the contract. Protests may be made before or shortly after an award has been made. Since award of contracts may depend on the disposition, protests should be handled as expeditiously as possible.

Disputes, unlike protests, occur after a contract is awarded and involve a disagreement between the procuring agency and the supplier related to one or more contractual provisions.

To ensure objectivity, parties other than those charged with failure to make a proper award or recognize bidder's rights should handle disputes and protests. Commerce shall accept no protest or dispute appeal until all administrative remedies at the organizations level have been exhausted. Commerce appeal review is limited to the following:

- Violations of federal law and regulations (violations of state or local law shall be under the jurisdiction of state or local authorities) and
- Violations of organization's protest/dispute procedures or failure to review a protest or dispute

Any complaint, protest, or dispute will be resolved using the organization's Grievance and Complaint Policy. Administrative processes and negotiation will be used in advance of litigation in attempted to resolve disputes.

Contract Negotiations

Successful bidders should be invited in writing to enter negotiations. This phase of the procurement process involves critical decisions. Decisions, including approvals required before an agreement is executed, should be described in writing.

Pre-Negotiation

Following notification of selection, successful bidders shall be invited to attend a pre-negotiation session, if appropriate. The session is intended to advise each bidder of the parameters of the negotiations to be followed.

Pre-negotiating discussions are conducted among monitoring, planning, operations, management information system, and contracting and client service staff. These sessions usually reveal the previous year's deficiencies or future program and performance variations. These discussions result in a written listing of weaknesses, necessary changes and other items to be addressed during negotiation discussions.

Purpose of Negotiation

Negotiation procedures should establish the initially proposed funding amount as a starting point rather than an entitlement, and additional cost detail may be required of the bidder for the purpose of establishing a reasonable cost or price. Any increase in costs or reduction in services must be justified and documented to be in the best interest of the program and must be consistent with the authority delegated by the governing body.

Negotiation

During negotiation, focus is given to cost/price analysis, clarifying the Statement of Work, developing appropriate performance standards and payment terms, assuring reporting requirements measure performance and verifying the bidder is a responsible party.

Part of the negotiation discussions should include administrative cost restrictions and local limits on

profit/program income. Additional issues of audit requirements, appropriate insurance, bonding and necessary legal fees should be included.

Documentation

The steps in the negotiation process should be fully documented, including the names and titles of the individuals participating in the negotiation process. In noncompetitive negotiations a written record of the process should be maintained to sufficiently demonstrate the objectives of least cost, fairness, impartiality and independence have been appropriately safeguarded in the absence of competition.

Pre-Awards Survey

The purpose of conducting a pre-award survey is to ensure each organization being considered for funding meets all federal/state/local requirements for the provision of program services. For existing lower tier subrecipients and contractors, a valid pre-award survey or monitoring report, not more than two years old, is adequate.

The pre-award survey process, including the name(s) and title(s) of individual(s) responding to the survey, should be documented. A report should be prepared noting the strengths and weaknesses identified during the survey.

Contract Policy

The type of contract used is determined by using the *Subrecipient Contractor Determination Form*. The type of contract or agreement form selected for a given procurement shall reflect the characteristics of the products or services to be acquired. It should also provide suitable assurances costs incurred are reasonable and necessary, given the value provided, the risk entailed in the contract's performance and current market conditions.

Employees shall not use a cost-plus-a-percentage-of-cost or percentage-of-construction-cost contract.

A risk assessment shall be conducted for all subrecipients to analyze internal controls and monitoring risks. The completed assessment shall be kept with the contract file.

Special Procurement Considerations

Contractors list

A contractors list for services is used in circumstances requiring occasional, often unpredictable access to specific services and/or goods which, when the need arises, may require almost immediate acquisition. Lists are developed in anticipation of the unpredictable yet likely recurrence of situations requiring response by a given program.

The development of the contractors list requires issuance of either an invitation for bid or an RFP (if it can be reasonably anticipated the purchase will be less than \$25,000 in the aggregate, small purchase procedures may be employed). Selection of contractors to be included on the list results from a technical evaluation and the issuance of an instrument of understanding with the contractors to include procedures and potential deadlines for eventual selection and contract execution. The nature of the unpredictable need for services/goods may preclude a cost/price reasonableness analysis at the time of proposal evaluation and selection. This does not eliminate the requirement to conduct a cost/price reasonableness analysis at the time of acquisition of the service/goods.

A contractors list ensures those included on the list have undergone a full technical evaluation as described in this chapter for the specific services/goods disclosed on the list. At the time of acquisition, employees must notify all entities willing to provide the goods/services in the area required of the intent to procure. The notification shall provide specifics of the purchase and (as prescribed in the instrument of understanding) a deadline for cost estimate submission. Employees shall conduct a cost price analysis and shall select a vendor(s) for negotiation and contract development.

Contractor Enrollment

There are circumstances where institutions are enrolled as potential service providers based on licensing requirements (must be licensed in Kansas) and such other factors as minimum insurance. For example, child care providers are placed on the list if they are licensed by the State of Kansas and maintain insurance.

Customized Training

Customized training means company or industry specific training designed to fulfill specific workforce needs. For this purpose, an organization may consist of a company(s) or industry, or a trade union or other industry cooperative organization. The organization may be in an alliance or partnership with a training provider to develop and deliver training for specific skills designed to fulfill current workforce needs in the industry. The training must be designed to fulfill training standards/quality and performance consistent with the approved training plan of the Board.

Customized training is conducted with a commitment by the employer to employ an individual upon successful completion of the training, and involves the employer paying for a significant portion of the cost of training, as determined by the Board involved. In the case of customized training involving an employer located in multiple local areas in the State, the Governor of the State determines the significant portion of the cost of the training as determined to be appropriate.

In most circumstances, this type of training agreement is procured competitively as prescribed. However, organizations may have short timelines requiring immediate implementation of a training program. Under conditions that can be documented, and with a full justification as to the value of the opportunity, the proposal may be procured under the noncompetitive procurement method.

In these circumstances, the organization shall obtain prior written approval from Commerce. A full explanation and justification for the training, with a description of the need and its potential for the local economy, as well as for the participant, shall accompany the notice. The opportunity must clearly be an opportunity for the participant to improve his/her circumstances in terms of skill development and pay consistent with the requirements of the funding program. It is imperative the employee provides a full explanation of the circumstances precluding competitive procurement and all documentation to back up the justification is maintained in the organization's files. The request shall include the results local board determinations of cost of training appropriateness, taking into account: the number of employees participating in training, wage and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities. As with all procurement files, a

comprehensive cost/price analysis must be maintained in the procurement file.

Pay-for-Performance Contract Strategy

This is a procurement strategy that uses pay-for-performance contracts in the provision of training services described in Section 134(c)(3) or activities described in Section 129 (c)(2) and includes:

- Contracts, each of which shall specify a fixed amount that will be paid to an eligible service provider (which may include a local or national community-based organization or intermediary, community colleges, or other training provider eligible under Section 122 or Section 123) based on the achievement of specified levels of performance on the primary indicators of performance described in Section 16(b)(2)(A) for target populations as identified by the local board, with a defined timetable, and which may provide for bonus payments to such service provider to expand capacity to provide effective training
- A strategy for independently validating the achievement of the performance described above and
- A description of how the State or local area will reallocate funds not paid to a provider because the achievement of the performance described above did not occur

Professional Services Contracts

For the purpose of this policy the term ‘professional services’ means those within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, professional engineering, or real estate appraising as defined by Kansas law or those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, professional engineer, or a state certified or state licensed real estate appraiser in connection with his professional employment of practice.

Only those individuals or entities listed above may be contracted for services under a professional services contract. Contracts with “professionals” cannot be based on, nor can their selection arise from, competitive bidding. Instead, the selection and award of such contracts and the engagement of such services shall be made on the basis of demonstrated competence and qualifications for the type of professional services to be performed. The costs may be deemed fair and reasonable as long as the professional fees are consistent with and not higher than the published and recommended practices and fees of the various applicable professional associations and do not exceed the maximum provided by any state law. Such a process must be documented prior to the contract award. The choice of a potential contractor may be accomplished through the use of an RFP or an Invitation for Bids.

Although attorneys or legal services in general are not included in the definition of professional services outlined above, all agreements with attorneys to provide legal services must result from an arm’s length relationship. Organizations shall not enter into agreements with attorneys without first ascertaining and documenting their demonstrated competence, knowledge and qualifications. For the purposes of this policy, organizations may choose an attorney through the RFP or RFQ process as identified above (professional services).

Consultant Contracts

Consulting service means the practice of studying an existing or a proposed operation or project of an agency and advising the agency with regard to the operation or project.

Only those contracts providing for the study of an existing or a proposed operation or project of an agency, and advising the agency with regard to the operation or project can qualify as a consultant contract. For example, a contract providing for the study of an agency's computer capability and the advice given to better utilize such capability would be a consultant contract. A contract to provide instruction to staff in the more efficient use of the computer would not be a consultant contract, as there was no study of the system involved.

A consulting service may be procured only under the following circumstances:

- There is a substantial need for the consulting services and
- The organization cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state agency

Consulting services must be competitively procured and do not fall under the rule for professional services described above. In the selection of a private consultant, employees must accomplish the following:

- Demonstrate, through documentation, a substantial need for consulting services exists
- Base the selection on demonstrated competence, knowledge and qualifications and reasonableness of the proposed fee for the services and
- Give preference to a private consultant whose principle place of business is in the State of Kansas, or who will manage the consulting contract from an office in the State of Kansas, given other considerations are equal

Consultant contracts of less than \$150,000 do not require formal bids. However, consultants may not receive a combination of contracts if the total exceeds \$150,000 during any state fiscal year without benefit of a published competitive procurement.

Consultant contracts under \$150,000 may be awarded following a thorough evaluation process. This ability to perform and cost/price involved shall be evaluated for at least three prospective contractors. The object of the evaluation process is to demonstrate the best cost/price was obtained from a qualified contractor for the service being sought. Consultant contracts valued in excess of \$150,000 must be secured through a formally advertised procurement process. Contract performance must be evaluated and used as a consideration in any future contract with the same party.

Leased Office Space and Insurance Providers

Employees shall adhere to the procurement standards for all contractor procurement actions, including the solicitation, evaluation and award of office space leasing and/or insurance providers.

Although the use of informal bidding is allowable under the small purchase method, when such services are expected to exceed the small purchase threshold of \$150,000, employees should ensure appropriate measures are taken to promote and maximize competition. Minimum measures to promote competition include publicizing the availability of the solicitation and disseminating it to all parties requesting it, as well as to those on bidders or contractor mailing lists maintained. Utilizing the standards outlined will ensure full and open competition and provide equal treatment to all potential respondents.

A broker/agent may procure leasing office space and/or insurance providers on behalf of the

organization provided these standards are adhered to. Employees must maintain documentation to substantiate the procurement and selection process. Documentation required is inherent of the procurement method used and the total dollar amount of the award.

The relationship between the organization and the broker/agent must be established through an arm's length relationship. Employees shall not enter into agreements with brokers/agents without first ascertaining and documenting their demonstrated competence, knowledge and qualifications. Although the selection of a broker/agent for these types of procurements may be informal, it is recommended this process be documented through the issuance of an RFP and a written determination of the selection process.